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Separate paging is given to this Part in order that it may be filed as a Separate Compilation.

PART IV-C

Statutory Rules and Orders (Other than those published in Parts I, I-A and I-L) made by Statutory Authorities other than the Government of Gujarat including those made by the Government of India, the High Courts, the Director of Municipalities, the Commissioner of Police, the Director of Prohibition and Excise, the District Magistrates and the Election Commission, Election Tribunals, Returning Officers and other authorities under the Election Commission.

RAJ BHAVAN

Gandhinagar, 2nd November, 2021

No. MEM-2721-I-135-GS-CON-40

Order under Article 191(1) and 192 of the Constitution of India based on the expert opinion of the Hon'ble Election Commission of India in Reference Case No. 6(G) of 2021.

- Read : (1) A petition dated 30th March, 2021 from Shri Mungarbhai Mamadbhai Juneja, resident of Village: Amrapur (Kathina), Tehsil: Mendarda, Dist: Junagadh, Gujarat addressed to the Hon'ble Governorshri of Gujarat, seeking disqualification of Shri Bhikhabhai Galabhai Joshi, duly elected member of the Legislative Assembly from the 86-Junagadh Legislative Assembly Constituency, District: Junagadh as disqualified under the provisions of the Article 191 and 192 of the Constitution of India.
- (2) Reference made by the Raj Bhavan Secretariat to the Election Commission of India, New Delhi vide its letter No. 2721-M-511-GS-1784, dated 28th May, 2021.
- (3) Opinion received from the Election Commission of India, New Delhi vide its letter No. 113/6(G)/ECI/LET/FUNC/JUD/2021/Registry/958, dated 14th October, 2021.

Preamble :

One applicant named Shri Mungarbhai Mamadbhai Juneja, resident of Village: Amarpur (Kathina), Tehsil: Mendarda, Dist: Junagadh (Gujarat) had approached me vide his representation dated 30th March, 2021 with a plea to declare Shri Bhikhabhai Galabhai Joshi a duly elected Member of the Legislative Assembly from the 86–Junagadh Legislative Assembly Constituency, Dist.: Junagadh, Gujarat, as disqualified under the provisions of the Article 191 of the Constitution of India. He had also requested me to pass such further orders that might be deemed fit in the interest of justice in support of his petition. He had also enclosed a few documents relevant with this matter.

After perusal of the representation Shri Mungarbhai Mamadbhai Juneja, resident of Village: Amrapur (Kathina), Tehsil: Mendarda, Dist: Junagadh, Gujarat dated 30th March, 2021 and after going through the documents attached therewith, I had formed a view that since this was an elected related dispute, the Election Commission of India is the right forum to examine such matters. Therefore, I, Acharya Devvrat, the Governor of Gujarat, had desired to make reference to the Election Commission of India for soliciting its considered opinion in the matter. Consequently, the Raj Bhavan Secretariat had approached the Election Commission of India, New Delhi vide its proposal bearing No. 2721-M-511-GS-1784, dated 28th May, 2021 and had requested it to examine the matter.

Thereafter, the Election Commission of India, New Delhi had considered the whole matter and has sent its considered opinion to the Raj Bhavan Secretariat vide its letter No. 113/6(G)/ECI/LET/FUNC/JUD/2021/ Registry/958 dated 14th October, 2021, which was received in the Raj Bhavan Secretariat on 20th October, 2021 in reference to the Case No. 6(G) of 2021, wherein, it had made the following observations. The same are quoted as shown below :

REFERENCE CASE NO. 6(G) OF 2021**[REFERENCE FROM THE HON'BLE GOVERNOR OF GUJARAT UNDER ARTICLE 192 OF THE CONSTITUTION OF INDIA]**

In re : Reference Case No. 6(G) of 2021 – Reference received from the Hon'ble Governor of Gujarat under Article 192 of the Constitution of India seeking opinion of the Election Commission of India on the question of alleged disqualification of Sh. Bhikhabhai Galabhai Joshi, Member of Legislative Assembly from 86–Junagadh Assembly Constituency of Gujarat, under Section 8 of the Representation of the People Act, 1951.

OPINION

1. This is a reference dated 28.05.2021 received from the Hon'ble Governor of Gujarat seeking opinion of the Election Commission of India under Article 192(2) of the Constitution of India, on the question whether Sh. Bhikhabhai Galabhai Joshi, Member of the Legislative Assembly from 86–Junagadh Assembly Constituency of Gujarat, has incurred disqualification under the provisions of Section 8 of the Representation of the People Act, 1951.
2. In the said reference, the question of disqualification arose out of a petition dated 30.03.2021 submitted by Shri Mungarbhai Mamadbhai Juneja (hereinafter, "**Petitioner**"), before the Hon'ble Governor of Gujarat, wherein the Petitioner sought disqualification of Sh. Bhikhabhai Galabhai Joshi (hereinafter "**Respondent**"), Member of Legislative Assembly from 86–Junagadh Assembly Constituency of Gujarat on ground of his conviction by Judicial Magistrate First Class, Mendarada vide Judgment dated 20.02.2021 in Criminal Case No. 150/2010.

FACTS:

3. The Petitioner has stated that the Respondent has been convicted under Section 323, 324 and 452 of the Indian Penal Code, 1860 in the aforesaid judgment and sentenced to one year imprisonment with fine of Rs. 5000. The Petitioner has further stated that the Respondent, in view of the said judgment, has incurred disqualification under Section 8 of the Representation of the People Act, 1951. Lastly, it is stated that if the Respondent is not disqualified, it will be an open abuse of law which will adversely affected the dignity of the Legislative Assembly.

ANALYSIS :

4. In the said judgment, the Respondent has been convicted under Section 248(2) of the Code of Criminal Procedure, 1973 read with Section 114, 323, 324 and 452 of the Indian Penal Code, 1860. It is pertinent to note that conviction under the above-mentioned penal provisions does not attract disqualification under Section 8(1) & 8(2) of the Representation of the People Act, 1951. Further, under Section 8(3) of the said Act, a person is disqualified for a period of 6 years after completion of the sentence of imprisonment if he is convicted with a sentence of imprisonment which is not less than two years.

5. In Lily Thomas vs. Union of India [(2013) 7 SCC 653], the Hon'ble Supreme Court had observed that :

"[...] if any sitting Member of Parliament or a State Legislature is convicted of any of the offences mentioned in such-sections (1), (2) and (3) of Section 8 of the Act and by virtue of such conviction and /or sentence suffers the disqualifications mentioned in sub-sections (1),(2) and (3) of Section 8 of the Act after the pronouncement of this judgment, his membership of Parliament or the State Legislature, as the case may be, will not be saved by sub-section (4) of Section 8 of the Act which we have by this judgment declared as ultra vires the Constitution notwithstanding that he files the appeal or revision against the conviction and/or sentence."

However, in the present case, the conviction of the Respondent does not attract the provisions of Section 8(1), (2) and (3) of the Representation of the People Act, 1951 and therefore, the Respondent does not suffer from disqualification mentioned therein.

CONCLUSION :

6. In view of the above, the Commission hereby opines that Sh. Bhikhabhai Galabhai Joshi, Member of Legislative Assembly from 86-Junagadh Assembly Constituency of Gujarat, has not incurred disqualification under Article 191 (1) (e) of the Constitution read with Section 8 of the Representation of the People Act, 1951.

Sd/-
RAJIV KUMAR
(ELECTION COMMISSIONER)

Sd/-
SUSHIL CHANDRA
(CHIEF ELECTION COMMISSIONER)

Sd/-
ANUP CHANDRA PANDEY
(ELECTION COMMISSIONER)

Place : New Delhi

Date : 14.10.2021

Summing up:

Now, the question as to the disqualification of Shri Bhikhabhai Galabhai Joshi, a duly elected Member of the Legislative Assembly from 86– Junagadh Legislative Assembly Constituency, Dist. Junagadh, Gujarat requires to be decided by me as per the provisions of Article 192 of the Constitution of India. These are as follows:

“192. Decision on questions as to disqualifications of members-

- (1) if any question arises as to whether a member of a House of the Legislature of a State has become subject to any of the disqualifications mentioned in Clause (1) of Article 191, the question shall be referred for the decision of the Governor and his decision shall be final.
- (2) Before giving any decision on any such question, the Governor shall obtain the opinion of the Election Commission of India and shall act according to such opinion.”

In view of the above mentioned provisions, I am required to act and decide keeping in view the considered opinion expressed by the Election Commission of India in this matter.

I have gone through the contents of the considered opinion of the Election Commission of India. I am in total agreement with the same. As such, after considering the constitutional provisions of Article 191 and 192 of the Constitution of India, I, Acharya Devvrat, the Governor of Gujarat, considered it appropriate to pass the following order :

ORDER

Shri Bhikhabhai Galabhai Joshi, Member of the Gujarat Legislative Assembly from 86–Junagadh Legislative Assembly Constituency, Dist: Junagadh, Gujarat has not incurred disqualification under the provisions of the Article 191(1)(e) of the Constitution of India read with Section 8 of the Representation of the People Act, 1951.

The petition from Shri Mungarbhai Mamadbhai Juneja, resident of Village: Amrapur (Kathina), Tehsil: Mendarda, Dist: Junagadh (Gujarat) dated 30th March, 2021 stands disposed off.

Sd/-
ACHARYA DEVVRAT,
GOVERNOR OF GUJARAT

Place : Gandhinagar

Date : 2nd November, 2021

